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John T Callahan
Sughrue Mion
2100 Pennsylvania Avenue NW
Washington DC 20037-3213

In re Application of
STRATFORD et al.
Application No.: 10/018,783
PCT No.: PCT/GB00/02485
Int. Filing: 26 June 2000
Priority Date: 24 July 1999
Attorney Docket No.: Q67462
For: BALLOON EXPANDABLE STENT

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: DECISION ON
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: PETITION UNDER
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: 37 CFR 1.181
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This is a decision on applicants' "Petition For Withdrawal of Holding of Abandonment under MPEP Section 711.03(c)(I)(B)" filed in the United States Patent and Trademark Office (USPTO) on 03 November 2004. The communication is being treated as a petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 21 December 2001, applicant filed a Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Filing Under 35 U.S.C. 371 (Form PTO 1390) along with, *inter alia*, the basic national fee.

On 20 February 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b), and the surcharge for filing oath or declaration after the thirty month period, were required.

On 19 March 2002, applicant filed a response to the Notification along with a declaration.

On 01 April 2002, a Notification of Defective Response was mailed to applicant indicating that the declaration did not respond to the Notification because the declaration did not comply with the requirements of 37 CFR 1.497(a) & (b) since the declaration did not identify the typed or printed name of each inventor or their citizenship. The Notification set a one month time period within which to respond. No extensions of time were available but the period for response set in the Notification of Missing Requirements could be extended under 37 CFR 1.136(a).

On 07 October 2004, a Notification of Defective Response Abandonment was mailed to applicant indicating that applicant had failed to properly respond to the Notification of Missing Requirements mailed on 20 February 2002 and thus, the application was abandoned.

On 03 November 2004, in response to the Notification of Defective Response Abandonment, applicant filed the instant response with, *inter alia*, a copy of the 12 June 2002 "Response to Notification of Defective Response", a copy of the executed declaration and an itemized USPTO date-stamped postcard indicating that an executed declaration and a request for

a two-month extension of time was filed on 12 June 2002.

DISCUSSION

The original declaration filed on 12 June 2002 is not located in the application file. A review of the finance records for 10/018,783 indicates that on 19 March 2002, the \$130 surcharge for filing the declaration after the thirty month period was paid. The fees for a two month extension of time were not paid and will be charged to applicant's deposit account per his authorization.

As stated in section 503 of the Manual of Patent Examining Procedure (Rev. 2, May 2004)(MPEP):

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO.

A review of the USPTO date-stamped, itemized postcard receipt indicates that the combined declaration and power of attorney was deposited with the USPTO on 12 June 2002 along with a petition for a two month extension of time.

The evidence submitted is sufficient to establish that a declaration for this application was received in the USPTO on 12 June 2002. The communication filed 03 November 2004 includes a copy of the executed declaration. Accordingly, it is appropriate to accept the copy of the declaration as a replacement for the missing original declaration with a deposit date of 12 June 2002. The evidence submitted by applicant, the postcard receipt date stamped by the USPTO, is sufficient to overcome the *prima facie* evidence of the application file itself.

A review of the declaration reveals that the declaration identifies the inventors, and states the citizenship and mailing address of the inventor. Thus, the declaration is acceptable and the requirements of 37 CFR 1.497 are met.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED**. The request for a two month extension of time is granted.

The copy of the declaration originally submitted on 12 June 2002 and resubmitted on 03 November 2004 is acceptable and meets the requirements of 37 CFR 1.497(a) & (b).

The application will be forwarded to the United States Designated/Elected Office for further processing. The 35 U.S.C. 371(c)(1), (c)(2) & (c)(4) date is **12 June 2002**.


Cynthia M. Kratz
Attorney Advisor
PCT Legal Office

Telephone: (571) 272-3286
Facsimile: (571) 273-0459